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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,557	11/13/2003	Richard A. Hogan	03-5382	8813
39820	7590	12/07/2005	EXAMINER	
EDWARD M. LIVINGSTON, PA 963 TRAIL TERRACE DRIVE NAPLES, FL 34103			KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/712,557	Applicant(s) HOGAN ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/13/03</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, the applicant recites front and back sections having a cover, however the specification only supports a front section having a cover per figure 1. Also, the applicant claims a filling located between the front and back sections, however, the page 6, lines 10 – 12 of the specification support a filling located within the pad. It is unclear what the pad comprises. Are the pad, the cover and the filling three separate elements? Clarification and/or correction are required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 5 – 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by von Emster (US 5,248,308).

With reference to claim 1, von Emster discloses an ostomy comfort pad comprising: a front section and a back section having edges; said front section is attached to said back section along said edges; said front and back sections having a top section, a body section and a bottom section; said top sections having at least one arm (figure 2); said at least one arm having a fastener (H); said body sections having a predetermined length; said body sections having a cut-out (14); said front bottom section having a pocket (13); and said front and back sections having a cover (figure 4), and a filling located between the front and back sections as set forth in col. 2, lines 60 – 65.

As to claim 2, von Emster discloses an ostomy comfort pad wherein: said top sections have two arms (figure 2); and said front top, body and bottom sections are the same size and shape as said back top, body and bottom sections as set forth in figure 1.

Regarding claim 3, von Emster discloses an ostomy comfort wherein said fastener is a hook and loop type material; and said hook and loop type material is located on said front section as set forth in col. 3, lines 9 – 11 and in figure 2.

With respect to claim 5, von Emster discloses an ostomy comfort pad wherein: said arms have a predetermined length; and said arm lengths is at least half the length of the body sections as set forth in figure 2.

As to claim 6, von Emster discloses an ostomy comfort pad wherein: said cut-out is sized and shaped for the acceptance of an ostomy appliance collar as set forth in figures 1 – 2.

As to claim 7, von Emster discloses an ostomy comfort pad wherein: said pocket is sized and shaped for the acceptance of an ostomy appliance clip as set forth in figures 1 – 2.

Regarding claim 10, von Emster discloses an ostomy comfort pad wherein: said body sections are sized slightly larger than an ostomy appliance; and said bottom sections are sized slightly larger than an ostomy appliance as set forth in figures 1 – 2.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over von Emster (US 5,248,308).

The difference between von Emster and claim 4 is the provision that the fastener is an adhesive tab.

It would have been obvious to one of ordinary skill in the art to modify the fastener of von Emster to provide an adhesive fastener since the substitution of one type of fastener for another is within the level of ordinary skill in the art.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over von Emster (US 5,248,308) in view of Hogan (US 4,439,191) .

The difference between von Emster and claim 8 is the provision that the cover is polypropylene.

Hogan teaches an ostomy appliance with a polypropylene cover as set forth in col. 3, lines 22 – 26.

It would have been obvious to one of ordinary skill in the art to modify the cover of von Emster to providing polypropylene because the polypropylene has the requisite strength to hold waste material therein and is also impervious to liquid and gas as taught by Hogan in col. 3, lines 22 – 26.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over von Emster (US 5,248,308) in view of Zedlitz (US 2003/0225387).

The difference between von Emster and claim 10 is the provision that the filling is pinewood fluff.

Zedlitz teaches an ostomy cover with a wood pulp fluff filling as set forth on page 2, [0027].

It would have been obvious to one of ordinary skill in the art to modify the filling of von Emster to providing a wood pulp fluff filling because the wood pulp fluff filling provides a more effective product as taught by Zedlitz on page 2 [0027].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michele Kidwell  
Primary Examiner  
Art Unit 3761